

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

DARLENE TATE,

Plaintiff,

vs.

MICHAEL J. ASTRUE,  
Commissioner, Social Security  
Administration,

Defendant.

Case No. 10-CV-712-FHM

**OPINION AND ORDER**

It has come to the attention of the court that the Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) filed by Plaintiff's counsel, [Dkt. 22] is still pending. The Commissioner did not file a brief in response to the motion.

In *McGraw v. Barnhart*, 450 F.3d 493, 496 (10th Cir. 2006), the Court ruled that attorney fees are awardable under 42 U.S.C. § 406(b)(1) when the Social Security Administration awards disability benefits to a claimant following a remand from the federal court. In such a circumstance the authority of Fed. R. Civ. P. 60(b)(6) is employed to allow counsel to seek fees under §406(b)(1) long after the usual fourteen days allotted by Fed. R. Civ. P. 54(d)(2)(B)(i) for filing a motion for attorney fees has expired. *McGraw*, 450 F.3d at 505.

The court remanded this case to the Commissioner for further administrative action, pursuant to sentence four of 42 U.S.C. § 406(g). The Commissioner issued a favorable decision. Counsel's motion for relief under Rule 60(b)(6) was filed less than a month after the issuance of the decision. Counsel represents that, as of the date of filing the instant motion, the Notice of Award containing the amount of past due benefits has not been

received. Consequently, the amount of the contingent attorney fee cannot be ascertained. Counsel requests an order allowing the filing of the motion for 406(b) fees within sixty days of receipt of the Notice of Award.

The Court finds that the instant motion was filed within a reasonable time of the decision awarding benefits and that the request for sixty days from receipt of the Notice of Award in which to file a motion for fees under §406(b) is reasonable.

The Motion for Relief Pursuant to Fed. R. Civ. P. 60(b)(6) is GRANTED, as follows: a motion for an attorney fee award under §406(b), together with the required notice to Plaintiff and statement concerning any objection thereto, may be filed within 60 days of the Notice of Award.

SO ORDERED this 11th day of February, 2019.

  
FRANK H. McCARTHY  
UNITED STATES MAGISTRATE JUDGE